

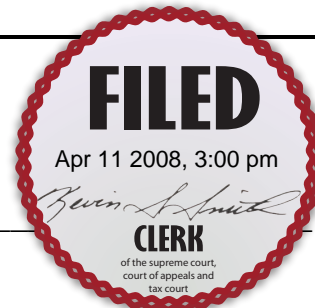
PETITIONER APPEARING PRO SE:  
**LYLE LACEY**  
Indianapolis, IN

ATTORNEYS FOR RESPONDENT:  
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**IN THE  
INDIANA TAX COURT**

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LYLE LACEY,  
Petitioner,

v.

INDIANA DEPARTMENT OF  
STATE REVENUE,  
Respondent.

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Cause No. 49T10-0711-TA-70

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ORDER ON RESPONDENT'S MOTION  
FOR JUDGMENT ON THE PLEADINGS

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**NOT FOR PUBLICATION**  
**April 11, 2008**

FISHER, J.

Lyle Lacey (Lacey) appeals from the final determination of the Indiana Department of State Revenue (Department) that held that he owed Indiana adjusted gross income tax for the 2006 tax year (year at issue). The matter is currently before the Court on the Department's motion for judgment on the pleadings.

## FACTS AND PROCEDURAL HISTORY

During the year at issue, Lacey, an Indiana resident, was employed by Adecco. On his Indiana income tax return, Lacey reported negative income and sought a refund of the state and county taxes withheld by his employer. The Department subsequently notified Lacey that there were inconsistencies in his tax return and indicated that he actually owed an additional \$577.65. After conducting an administrative hearing, the Department denied Lacey's claim for refund.

On November 30, 2007, Lacey initiated this original tax appeal. In his appeal, Lacey claimed that he did not owe tax on the compensation he earned during the year at issue for two reasons. First, Lacey claimed that the Internal Revenue Code does not apply to Indiana.<sup>1</sup> (See Pet'r Pet. for Review (hereinafter, Pet'r Pet.) ¶¶ 29-50; Hr'g Tr. at 29-30 (footnote added).) Lacey's argument takes the following path: 1) the Internal Revenue Code applies to wages earned within the United States; 2) the Internal Revenue Code defines "state" and "United States" as the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa; 3) the Internal Revenue Code therefore does not apply to Indiana because Indiana is not included in the definitions of "state" and "United States." (See Pet'r Pet. ¶¶ 26-27, 29-50; Hr'g Tr. at 29-30.) In support of his argument, Lacey cites to other sections of the Internal Revenue Code that explicitly include the fifty states in their definitions of the word "state" and "United States." (See Pet'r Pet. ¶¶ 42-46 (citing to I.R.C. §§ 6103 and

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<sup>1</sup> For purposes of taxation in Indiana, "adjusted gross income" is the same as "adjusted gross income" as defined in the Internal Revenue Code, with certain modifications. IND. CODE ANN. § 6-3-1-3.5 (West 2006). Thus, if Lacey has no adjusted gross income as defined in the Internal Revenue Code, he would generally not have any adjusted gross income for Indiana income tax purposes.

4612 for the proposition that if the fifty states were meant to be included in the definitions, Congress would have explicitly mentioned them therein).) Second, Lacey claimed that his compensation did not constitute “wages” as that term is defined in the Internal Revenue Code and therefore not subject to tax. (See Pet’r Pet. ¶¶ 3, 55-97.)

On January 28, 2008, the Department filed a motion for judgment on the pleadings. In its motion, the Department argues that the terms “state” and “United States” as defined in the Internal Revenue Code mean Indiana and the other 49 states, in addition to the District of Columbia and the federal territories. (See Resp’t Br. in Supp. of its Mot. for J. on the Pleadings (hereinafter, Resp’t Br.) at 6.) Consequently, the Department claims, Lacey’s wages earned in Indiana are subject to tax.<sup>2</sup> (Resp’t Br. at 8 (footnote added).) This Court conducted a hearing on the Department’s motion on March 13, 2008. Additional facts will be supplied as necessary.

### **STANDARD OF REVIEW**

“A motion for judgment on the pleadings pursuant to Ind[iana] Trial Rule 12(C) attacks the legal sufficiency of the pleadings.” *Eskew v. Cornett*, 744 N.E.2d 954, 956 (Ind. Ct. App. 2001) (citation omitted), *trans. denied*. Thus, “[a] judgment on the pleadings is proper only when there are no genuine issues of material fact and when the facts shown by the pleadings clearly establish that the non-moving party cannot in any way succeed under the facts and allegations therein.” *Id.* (citation omitted).

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<sup>2</sup> In its motion, the Department also argues that wages are income. (Resp’t Br. in Supp. of its Mot. for J. on the Pleadings (hereinafter, Resp’t Br.) at 3.) Lacey, however, does not dispute that wages are income. (Pet’r Br. in Supp. of [its] Opp’n to Resp’t Mot. for J. on the Pleadings (hereinafter Pet’r Br.) at 5.) Rather, Lacey argues that the compensation he earned does not constitute “wages” as that term is defined in the Internal Revenue Code. (See Pet’r Pet. for Review (hereinafter, Pet’r Pet.) ¶ 3.) The Department’s motion does not address that argument. (Hr’g Tr. at 3-5.) Thus, resolution of that issue is reserved for another day.

## DISCUSSION

The Internal Revenue Code defines “wages” as “all remuneration for employment[.]” I.R.C. § 3121(a) (West 2006). In turn, “employment” is defined as “any service, of whatever nature, performed [] by an employee for the person employing him . . . within the United States[.]” I.R.C. § 3121(b). Section 3121(e) of the Internal Revenue Code states that the term “United States” “*includes* the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.” I.R.C. § 3121(e)(2) (emphasis added). It also provides that the term “state” “*includes* the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.” I.R.C. § 3121(e)(1) (emphasis added). Lacey contends that pursuant to the definitions of these terms, the Internal Revenue Code only applies to wages earned in the District of Columbia and the federal territories and not to wages earned in Indiana. Lacey, however, is incorrect.

Lacey has read the word “includes” as a term of limitation. While the word “includes” can be a term of limitation, it can also be a term of enlargement. See WEBSTER’S THIRD NEW INT’L DICTIONARY 1143 (2002 edition) (stating that “includes” means “a part or component of a whole or of a larger group”). Section 7701(c) of the Internal Revenue Code states that the word “includes” “shall not be deemed to exclude other things otherwise within the meaning of the term defined.” I.R.C. § 7701(c) (West 2006). Thus, in this context, the word “includes” is not a term of limitation, but rather one that enlarges the terms “state” and “United States” to not only mean Indiana and the other 49 states, but the District of Columbia and the federal territories as well. See *id.*; *U.S. v. Ward*, 833 F.2d 1538, 1539 (11th Cir. 1987). See also *U.S. v. Sloan*, 939

F.2d 499, 500-01 (7th Cir. 1991) (the tax code imposes a direct nonapportioned income tax “upon United States citizens throughout the nation, not just in federal enclaves”); *U.S. v. Collins*, 920 F.2d 619, 629 (10th Cir. 1990) (statute granting federal courts jurisdiction over “all offenses against the laws of the United States” is not limited to the District of Columbia and federal territories, but includes the fifty states as well); *U.S. v. Price*, 798 F.2d 111, 113 (5th Cir. 1986) (explaining that the citizens of Texas are no different than the citizens of other states when it comes to being subject to the Internal Revenue Code).

As a matter of law, the terms “state” and “United States” as defined in the Internal Revenue Code include Indiana and the other 49 states. Thus, wages earned in Indiana are subject to the provisions of the Internal Revenue Code. Accordingly, Lacey’s claim that the Internal Revenue Code does not apply to Indiana is REJECTED.

### **CONCLUSION**

For the foregoing reasons, the Department’s motion for judgment on the pleadings is GRANTED as to Lacey’s claim that the Internal Revenue Code does not apply to wages earned in Indiana. The Court will set the remaining issue, whether the compensation Lacey received from his employer constitutes “wages” as defined in the Internal Revenue Code, for further proceeding in a separate order.

SO ORDERED this 11th day of April, 2008.

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Thomas G. Fisher, Judge  
Indiana Tax Court

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